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09/931,913	08/20/2001	Nghi Van Nguyen	05725.0848-00	4345
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER ELHILO, EISA B	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* NGHI VAN NGUYEN and DAVID W. CANNELL

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Appeal 2007-3675  
Application 09/931,913  
Technology Center 1700

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Decided: July 23, 2008

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Before EDWARD C. KIMLIN, CHUNG K. PAK, and  
TERRY J. OWENS, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-20, 22-29, and  
30-45. Claim 1 is illustrative:

1. A composition for lanthionizing keratinous fibers to achieve  
relaxation of said keratinous fibers comprising:

i) at least one hydroxide compound;

(ii) at least one oxidizing agent; and

(iii) at least one complexing agent effective for dissociating the at least one hydroxide compound,

wherein said at least one hydroxide compound and said at least one oxidizing agent are present in the composition in a sufficient quantity to effect lanthionization of keratinous fibers.

The Examiner relies upon the following references as evidence of obviousness:

Au	US 5,872,111	Feb. 16, 1999
Plyes	US 2001/0008630 A1	Jul. 19, 2001

Appellants' claimed invention is directed to a composition comprising an hydroxide compound and an oxidizing agent in sufficient quantity to effect lanthionization of keratinous fibers. The composition also comprises a complexing agent that is effective for dissociating the hydroxide compound.

Appealed claims 1-20, 22-28 and 30-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Au. Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Au in view of Plyes.

We have thoroughly reviewed the respective positions advanced by Appellants and the Examiner. In so doing, we find ourselves in agreement with Appellants that the Examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the Examiner's rejection.

Au discloses a wide variety of detergent and personal product compositions that are said to have excellent cleansing properties (col. 3, ll. 23-25). Among the products are detergents, shampoos, hair

straighten/relaxing products, etc. Au discloses that the shampoos may contain the claimed hydroxide and complexing agent, for example, a sequestering agent (see col. 14, ll. 14-34). As recognized by the Examiner, Au does not disclose the claimed oxidizing agent in the shampoo or other hair treating composition. To remedy this deficiency, the Examiner points to Au's disclosure of an oxidizing agent in the reference detergent compositions and, according to the Examiner, Au "teaches and discloses detergent and personal products compositions as the equivalence [sic] compositions that have common properties (see col. 3, ll. 23-36)" (pg 6 of Ans, fourth paragraph, first sentence). Therefore, although Au does not disclose a composition comprising the claimed components for lanthionizing keratinous fibers, the Examiner reasons that it would have been obvious for one of ordinary skill in the art to formulate the claimed composition from Au's disclosure that would inherently have the claimed lanthionizing property.

The flaw in the Examiner's reasoning arises from the erroneous conclusion that Au teaches that detergent compositions and hair treating compositions have equivalent properties. While it may be true that detergent and hair treating compositions share some properties, it should be clear that they do not share all properties such that they are equivalent in all respects. Manifestly, one would not reasonably expect a detergent composition to be equivalent to a shampoo in treating hair. Accordingly, we agree with Appellants that the Examiner has failed to establish the requisite reasonable expectation of success for adding the claimed oxidizing agent to compositions fairly taught by Au as hair treating compositions.

Plyes, cited by the Examiner for the claim 29 recitation that the amino acid is monosodium glutamate, does not remedy the basic deficiency of Au set forth above. In addition, we agree with Appellants that the Examiner has not established that Au's disclosure of essential amino acid compounds found naturally in the skin is a genus that embraces the claimed monosodium glutamate disclosed by Plyes.

In conclusion, based on the foregoing, we are constrained to reverse to the Examiner's rejections.

REVERSED

PL initials:  
sld

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